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Nos. 80-1832, 80-2170, 80-2171

In the Supreme Court of the United States

OCTOBER TERM, 1981

IMMIGRATION AND NATURALIZATION SERVICE, APPELLANT

v.

JAGDISH RAI CHADHA, ET AL., APPELLEES

UNITED STATES HOUSE OF REPRESENTATIVES, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

UNITED STATES SENATE, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

JOINT APPENDIX

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NO. 80-1832: JURISDICTIONAL STATEMENT FILED MAY 1, 1981
JURISDICTION POSTPONED OCTOBER 5, 1981
NOS. 80-2170: PETITIONS FOR CERTIORARI FILED JUNE 22, 1981
80-2171: CERTIORARI GRANTED OCTOBER 5, 1981

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DOCKET ENTRIES IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAGDISH RAI CHADHA, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

1977

Mar. 24—Filed original and six Petitions to Review a Deportation Order of the I&NS.

***

Apr. 22—Filed certified administrative record on appeal in one volume. Vol. I, pleadings, three certified copies.

***

July 20—Filed, as of July 18, 1977, 20 Petitioner's Briefs.

***

Oct. 27—Received 25 Respondent's Briefs.

Oct. 27—Filed respondent's suggestion to invite the submission of amici curiae briefs by the U.S. Senate and House of Representatives.

***

Nov. 18—Clerk's letter of 11/17/77, inviting the Vice President of the USA (Mondale) to file a brief amicus curiae within 30 days from this date.

Nov. 18—Clerk's letter of 11/17/77, inviting the U.S. Senate and House of Representatives (Hon.

O'Neill, Jr., Speaker) to file a brief amicus curiae within 30 days from this date.

***

1978

***

Feb. 28—Filed, as of Feb. 27, 25 Amicus Curiae Briefs (House of Representatives).

Feb. 28—Filed, as of Feb. 27, 25 Amicus Curiae Briefs (United States Senate).

***

Mar. 13—Received, as of Mar. 8, 25 Petitioner's Reply Briefs.

***

Mar. 24—Filed, as of Mar. 22, 25 Respondent's Reply Briefs (in response to briefs of Amicus Curiae).

***

Apr. 10—Cause argued and submitted to Ely, Carter, Kennedy, CJJ.

Apr. 11—Filed order (Ely, Carter & Kennedy) counsel for all parties including amici parties, are ordered to submit supplemental briefs within 21 days of this order.

***

Apr. 18—Filed, as of Apr. 14, order (E, C & K) Submission of the case is withheld pending further order of the court.

***

May 1—Filed 25 Petitioner's Supplemental Briefs (Chadha).

May 4—Filed 25 Supplemental Amicus Curiae Briefs (U.S. House of Representatives)

May 4—Filed 25 Supplemental Amicus Curiae Briefs (U.S. Senate)

***

May 16—Filed, as of May 15, 25 Supplemental Respondent's Briefs (I&NS)

***

1980

***

Nov. 28—Filed petitioner's memorandum with respect to current status of petitioner.

Dec. 11—Received, as of Dec. 8, letter dated 12/5/80 from amicus curiae (U.S. Senate) re intended submission of memorandum concerning petitioner's change in status.

Dec. 23—Filed, as of Dec. 22, order (Ely, Kennedy, Hug) case was reassigned to the panel of Judges Ely, Kennedy and Hug. That panel deems further oral argument unnecessary, and the case is ordered submitted herewith.

Dec. 23—As of Dec. 22, Cause Submitted.

***

Dec. 23—As of Dec. 22, Filed Opinion—Deportation Proceedings Cancelled.

Dec. 23—As of Dec. 22, Filed and Entered Judgment.

1981

***

Jan. 6—Filed, as of Jan. 5, Congressional amici's suggestion for a procedural order.

Jan. 19—Filed respondent's Notice of Appeal to the Supreme Court of the United States from the judg-

ment entered in this case pursuant to 28 U.S.C. 1252.

Jan. 19—Filed, as of Jan. 16, order (Kennedy) the mandate in this appeal is hereby stayed for a period of 30 days from the date of this order.

Jan. 20—Filed, as of Jan. 19, order (Ely, Kennedy, Hug) the time for filing a Petition for Rehearing or for Rehearing En Banc, or for other motions or petitions supplementary to those matters, is extended to February 4, 1981.

Feb. 4—Filed, as of Feb. 3, Motion (U.S. Senate) to Intervene.

Feb. 4—Filed, as of Feb. 3, Motion (House of Rep.) to Intervene.

Feb. 4—Received, as of Feb. 3, intervenors' (House and Senate) Petition for Rehearing and Suggestion for Rehearing En Banc.

Feb. 17—Filed petitioner's Memorandum in Response to Motion to Intervene filed by House and Senate.

Mar. 12—Filed, as of Mar. 10, order (Ely, Kennedy, Hug) the Motion to Intervene of the U.S. Senate and the House is granted. The clerk is requested to circulate the Petition for Rehearing En Banc to the active judges of the court.

Mar. 12—Filed as of Mar. 10, Petition for Rehearing (House & Senate) and Suggestion for Rehearing En Banc.

Mar. 25—Filed order (Ely, Kennedy, Hug) the Petition for Rehearing is denied and the Suggestion for Rehearing En Banc is rejected.

Apr. 1—Filed intervenors' Motion to Stay Mandate.

Apr. 8—Filed order (Kennedy) the Motion to Stay Mandate is hereby granted.

Apr. 16—Filed respondent's Notice of Appeal to the Supreme Court of the United States pursuant to 28 U.S.C. 1252.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of)
)
Jagdish Hari CHUDA)
Respondent.)

To: Jagdish Hari CHUDA
1210 Masonic Avenue, #2
Berkeley, California 94706
(Number, street, city, state, and ZIP code)

File No. A17 385 958

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Kenya
and a citizen of The United Kingdom;
3. You entered the United States at unknown place on or about September 13, 1967;
(place)
4. You were admitted as a nonimmigrant student for a temporary period and authorized to remain in the United States until June 30, 1972;
5. You have not departed from the United States.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Section 101(a)(15) of said Act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at 9:30 A.M.
300 North Los Angeles Street, Los Angeles, California
on January 11, 1974 at 9:30 A.M., and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: [illegible]

IMMIGRATION AND NATURALIZATION SERVICE

Form I-221
(Rev. 3-30-67)

[signature]
(Signature and title of issuing officer)

ACTING
(over) DISTRICT DIRECTOR, Los Angeles, California

Exhibit 1 to Hearing in Deportation Proceedings held January 11, 1974 before Chester Sipkin, Immigration Judge

85-991 7

Best Copy Available

TRANSCRIPT OF HEARING IN DEPORTATION PROCEEDINGS HELD JANUARY 11, 1974, BEFORE CHESTER SIPKIN, IMMIGRATION JUDGE

Appearances:

For the Immigration and Naturalization Service—Stuart Shelby, Esq.

For the Respondent—Steve R. Mittleman, Esq.

The IMMIGRATION JUDGE. Mr. Shelby, are you ready to proceed?

Mr. SHELBY. Yes, Your Honor.

The IMMIGRATION JUDGE. Mr. Mittleman, are you ready to proceed?

Mr. MITTLEMAN. Yes.

The IMMIGRATION JUDGE. This is a deportation proceeding in the matter of Jagdish Rai Chadha. The respondent will testify in the English language.

Q. Are you Jagdish Rai Chadha?

A. Yes, sir.

Q. Please stand and raise your right hand. Do you solemnly swear that the testimony you give at this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

The IMMIGRATION JUDGE. Mr. Mittleman, during the course of the proceeding you will be afforded an opportunity to examine any evidence offered against the respondent by the government, to object to the introduction of that evidence into the record, to cross-examine any witnesses called by the government and to present any evidence that you have on his behalf.

The Order to Show Cause which was issued in this

case will be made part of the record and marked *EXHIBIT 1.*

Mr. Mittleman, do you wish to answer the allegations in the Order to Show Cause for the respondent?

Mr. MITTLEMAN. Yes, I do.

The IMMIGRATION JUDGE. You waive the formal reading and explanation of the Order to Show Cause?

Mr. MITTLEMAN. Yes, I do.

The IMMIGRATION JUDGE. There are five allegations in the Order to Show Cause. Please advise which of the allegations you wish to admit and which of the allegations you wish to deny on behalf of the respondent.

Mr. MITTLEMAN. I wish to admit allegation number one. I admit allegation number two with an explanation that will come in the pleadings. I deny allegation three, admit allegation four and admit allegation five.

The IMMIGRATION JUDGE. Before I ask you to plead to deportability, Mr. Mittleman, give me your explanation that you said would be forthcoming in regard to allegation number two.

Mr. MITTLEMAN. In reference to two that he is a native of Kenya, I would establish and I have a letter from the Kenya government, that although he was born in Kenya that he absolutely has no status as a person in Kenya. Kenya has no ties or responsibilities toward him.

The IMMIGRATION JUDGE. The allegation is simply that he is a native of Kenya, the place he was born. Was he born there?

Mr. MITTLEMAN. Yes, but as to the United Kingdom I would like to show the Court that although he does

have a British passport which indicates he is a subject and citizen, in essence it's really nothing more than a travel document and that he really does not have citizen status in the United Kingdom and that is one of the problems in the situation we have here.

The IMMIGRATION JUDGE. Of course the second portion has nothing to do with deportability although it is set forth in the Order to Show Cause. Now in regard to allegation number three, why did you deny allegation number three?

Mr. MITTLEMAN. He entered the country on September 12, 1966, and I believe that was in New York. In fact, it was at JFK.

The IMMIGRATION JUDGE. Mr. Shelby, does the Service file show that was the date and place of entry?

Mr. SHELBY. Yes, Your Honor, the respondent's last entry into the United States was on September 13, 1967. However, he was admitted to the United States at New York, New York, on September 16, 1966, in the nonimmigrant classification of F–1. He was admitted until September 12, 1967, and received extensions of stay until June 30, 1972.

The IMMIGRATION JUDGE. Mr. Mittleman—I should address this question to you, Mr. Shelby, why does the Order to Show Cause show that he entered at an unknown place on September 13, 1967?

Mr. SHELBY. Because, Your Honor, in an interview which the respondent had with an investigator of the Service on July 16, 1973, he informed the investigator that he entered the United States on September 13, 1967, at an unknown place on the Canadian border.

The IMMIGRATION JUDGE. Did he also state how long he had been in Canada?

Mr. SHELBY. Yes, Your Honor. He stated that on September 7, 1967, he departed the United States and entered Canada at Blackpool and he reentered the United States on September 13, 1967. He further stated that he went to Canada for the Expo '67 with a group of other students and that they used their Forms I-20 with passports to reenter the United States.

The IMMIGRATION JUDGE. Mr. Mittleman, it appears that allegation number three is literally correct.

Mr. MITTLEMAN. Yes, Your Honor, it is correct and we will admit to that statement. I just wanted to clarify as to the correct date he first entered this country.

The IMMIGRATION JUDGE. Let's get back to the charge in the Order to Show Cause. Do you concede that he is deportable as charged?

Mr. MITTLEMAN. Yes.

The IMMIGRATION JUDGE. Do you wish to apply for any form of discretionary relief on his behalf?

Mr. MITTLEMAN. Yes, suspension of deportation.

The IMMIGRATION JUDGE. Do you have the application?

Mr. MITTLEMAN. No, I don't, Your Honor. That is one of the reasons——

The IMMIGRATION JUDGE. Why don't you have it if you are going to apply for it?

Mr. MITTLEMAN. Basically, this decision was made by me this past week and I was only given notice of

this hearing, I guess, less than a week now and I had just started doing the research and understanding the law and I haven't been able to put my case together at this point. So in essence there was a misunderstanding of the law on my part. I thought it could be oral argument where there didn't have to be a formal application given to the judge.

The IMMIGRATION JUDGE. Before the hearing started you informed me that you would like me to adjourn the hearing so that you could prepare such an application. Is this what you have in mind?

Mr. MITTLEMAN. That is correct, yes.

The IMMIGRATION JUDGE. Before you do so, I want to have it clear in my mind that he is at least prima facie eligible for the relief he seeks and I am going to ask Mr. Chadha a number of questions.

Q. How old are you, Mr. Chadha?

A. I'm thirty-six years old.

Q. Are you married?

A. No, sir.

Q. Have you ever been married?

A. No, sir.

Q. Are you employed?

A. No, sir.

Q. How are you supported?

A. I had a lot of savings when I came to the United States and at the same time I have been getting some money from my mother.

Q. When did you last work—or have you worked since you have been in the United States?

A. I was working during summers when I was in school.

Q. When did you last go to school?

A. After '72.

Q. Up to, not after?

A. No, I didn't go after that when I finished my graduate work in June.

Q. In June of 1972?

A. Yes.

Q. Do you have a graduate degree?

A. Yes, sir.

Q. In what?

A. In political science and economics.

Q. What kind of degree is it?

A. Masters and I have a bachelors in business.

Q. How is it that you haven't worked since June of 1972?

A. Everytime I just apply for a job the prospective employer wanted to know whether I was a permanent resident of this country and I had about ten interviews and everytime the whole thing—the case revolved around my permanent residence.

Q. You do intend to work if you are granted permanent residence, aren't you?

A. Yes, that is the plan and I had to go to Los Angeles because I had a job offer there but the employer said he was reluctant to hire me because of my being in a nonpermanent status.

Q. In order to be eligible for suspension of deportation you must establish that your deportation will result in an extreme hardship to you. Tell me briefly why you think your deportation would result in an extreme hardship to you.

A. Yes, sir. If your office has decided to deport me to Kenya where I was born—well, already you are probably familiar with the Asian situation in East Africa. It's very precarious and from time to time—I have got some papers telling—

Q. What is your racial derivation?

A. I'm of Indian origin.

Q. That's East Indian?

A. Yes, sir. from India.

Q. Anything else?

A. Well, sir, in '63 Kenya became independent and they extended us a grace period to '65 and '66 to become citizens and I applied for Kenyan citizenship because at that time I was coming to the United States for my education but things were very hard at that time for Asians because the nationalism was at its height and so my letters were not answered at all so I went for an interview also and he told me that I should travel on a British passport and when I came—well, I was in England for only about twelve days so when I came to the United States I was in touch with the Kenyan Government, the immigration authorities, asking them whether I could return after my education and they told me that I was entirely British responsibility.

Q. In other words, they said you couldn't go back to Kenya. Is that what you're saying?

A. Yes, sir. They said I could go back provided, like any other country, if I could get a job and my employer can get me a work permit and so I got in touch with——

Q. Before we go on, so far the hardship that you alluded to is based on the fact that you couldn't go back to Kenya.

A. Yes, sir.

Q. Is there any other hardship that you can think of?

A. Sir, I can't get a job there.

Q. Where?

A. In Kenya.

Q. If you can't go back, naturally you couldn't get a job there. That follows.

A. Yes, sir, but that is as far as Kenya is concerned and since they mentioned that I was not their responsibility, I had no status in Kenya, so I got in touch with the British Government and the British Government had established a quota system and according to that quota system only 1500 East African Asians were allowed a year. But about a year ago a mass exodus of Asians took place in Uganda so they are attacking this policy very much. And then, I got letters from them saying it will take several months, in fact, many years for me to go to England on a permanent basis.

Q. So what you are saying is, you can't go to Kenya because they won't let you in and notwithstanding you have a United Kingdom passport, you can't go to Britain because they also won't let you in?

A. Yes, sir.

Q. Would you be able to go back to India?

A. No, sir. I have never been there.

Q. Where do your parents live?

A. My mother lives in London and my father is dead.

Q. Any other hardship that you can think of?

A. Hardship in the sense that it would be hard for me to get a job over there.

Q. Well, you don't have to think of getting jobs in either the United Kingdom or Kenya if you can't go back. You don't have to elaborate on that aspect of your case.

A. Sir, I don't understand what other hardship you are thinking.

Q. I am not thinking of any hardship. You are supposed to be the one to think of hardship, but we will pass over that.

The IMMIGRATION JUDGE. Mr. Mittleman, the law requires that we go into the next aspect of the case and that is the country of deportability. I am required to ask this next question of Mr. Chadha.

Q. In the event you are ordered deported, to what country do you wish to be sent?

Mr. MITTLEMAN. Would it be possible not to name a country at this time?

The IMMIGRATION JUDGE. Yes, it would be.

Mr. MITTLEMAN. That's the position I want to take.

The IMMIGRATION JUDGE. Under the law, Mr. Mittleman, if the respondent does not specify a country then I am required to designate one and under the law I am required to designate the country of which he is a citizen first. I inform you that if I should eventually enter an order of deportation from this country I will in the first instance order that he be

deported to the United Kingdom. If you think the respondent will be persecuted in the United Kingdom because of his race, religion, political opinion or social position you may ask for withholding of his deportation to the United Kingdom. Do you wish to apply for the withholding of his deportation on that basis? Mr. Mittleman, perhaps you might want to answer that.

Mr. MITTLEMAN. Your Honor, in this situation I do believe there is a racial problem that does exist in Great Britain. Unfortunately, the next choice is even a greater racial problem.

The IMMIGRATION JUDGE. I intend to get to Kenya when we are finished with the United Kingdom, Mr. Mittleman. I just want to know whether you wish to file an application for the withholding of the respondent's deportation to the United Kingdom on the ground he would be persecuted there.

Mr. MITTLEMAN. I do believe there is a racial discrimination there.

The IMMIGRATION JUDGE. There is racial discrimination in this country too. Do you feel that the British Government would persecute against him? Is that what you are saying? The reason I am asking you this is because if you say so, you must establish this before I grant the withholding of deportation.

Mr. MITTLEMAN. Yes, I do believe that there is persecution against East Asians from East Africa in Great Britain.

The IMMIGRATION JUDGE. By the Government of Great Britain?

Mr. MITTLEMAN. By the Government, that's correct. By their policies.

IMMIGRATION JUDGE. Well yours will be the first application I have seen on that basis but perhaps you will be a leader in that regard. Now, Mr. Mittleman, in the event the respondent is not accepted as a deportee by the United Kingdom, then as an alternative I propose to order that he be deported to Kenya, the country of which he is a native. If you believe that he would be persecuted because of his race, religion or political opinion in Kenya you may also apply for the withholding of deportation to that country.

Mr. MITTLEMAN. I believe that the racial discrimination is even greater by the Government of Kenya.

The IMMIGRATION JUDGE. From what you have told me, he can't be deported to either country, so how come you are applying for the withholding of his deportation to those countries?

Mr. MITTLEMAN. Admittedly, I might have the procedures slightly incorrect. It was explained to me when applying for suspension there has to be a country to deport. In that instance I could name Great Britain, but I do feel that there is racial discrimination on the part of the government there and I also feel that there is in Kenya. The reason I propose to apply for suspension is that as an individual, in order for him to have any livelihood and I'm not saying in terms of livelihood he has a better opportunity because this country is better economically than any other country, but I am saying in any country he has to have permanent residence or some sort of tie with

that country in order to get gainful employment. And this is the reason I am trying to establish that he could get permanent residence in this country because that's the only way he could get that type of employment in this country and have an opportunity for livelihood.

The IMMIGRATION JUDGE. All I can say, Mr. Mittleman, is you are making an awful lot of work for yourself but it is all right with me because under outstanding instructions as soon as a person claims that he is going to be persecuted in any country to which he may be deported, the case is adjourned so that he can make an application for asylum in this country. Ordinarily, a person would not apply for asylum, it seems to me, if you couldn't deport him to the country specified but I am required to do it. I am going to adjourn the hearing.

Mr. MITTLEMAN. Excuse me. If that is the case, if he has to have a country, can I retract my previous statement against Great Britain and let you designate Great Britain?

The IMMIGRATION JUDGE. There is no requirement for a country of deportability in order to be eligible for suspension. You still are applying for the withholding of his deportation to Kenya. I will have to put off the case anyway.

Mr. MITTLEMAN. What I am trying to establish by this situation is the hardship that this man faces, the extreme hardship.

The IMMIGRATION JUDGE. I don't want to see the hardship at this point. I will wait for that until you

make your application for suspension. I'm telling you that under outstanding instructions when a person applies for the withholding of his deportation, the matter must first be referred to the Department of State and you must justify it and if you are certain in your own mind he won't be deported to Kenya you are going through a lot of motions for no reasons but that's up to you.

Mr. MITTLEMAN. I understand that. I feel that this is right and that's what I have to do.

The IMMIGRATION JUDGE. It's perfectly all right, Mr. Mittleman. In the meantime you can prepare the application for suspension so that if your request for asylum should be denied, you could still proceed on that basis. It seems to me there should be some way for us to avoid this though.

Mr. MITTLEMAN. May I address the Court off the record?

The IMMIGRATION JUDGE. Yes.

On the record. Mr. Mittleman, off the record, we discussed the possibility of your postponing the respondent's request for the withholding of his deportation. I think that that would probably be the best solution. I will not require you now, if you wish me to, for you to submit an application for the withholding of his deportation with the understanding that if his application for suspension of deportation should be denied that you will then be given an opportunity to do so. Is that what we agreed upon?

Mr. MITTLEMAN. Yes and that's what I wish.

The IMMIGRATION JUDGE. All right, we will do it that way.

Mr. Shelby, before I adjourn the proceedings to afford Mr. Mittleman an opportunity to apply for suspension of deportation, do you have anything else?

Mr. SHELBY. Yes, Your Honor. I would like to offer into evidence the respondent's I–94 verifying that he was admitted to the United States on September 13, 1966.

The IMMIGRATION JUDGE. Do you have any objection to this form being made part of the record, Mr. Mittleman?

Mr. MITTLEMAN. No objection, Your Honor.

The IMMIGRATION JUDGE. The form will be made part of the record and marked EXHIBIT 2.

Mr. SHELBY. Your Honor, I would like to offer into evidence a British passport, number D 658159 which was issued to Mr. Jagdish Rai Khiali Ram Nathod Ram Chadha. The passport contains thirty pages. On page one of the passport, the respondent's nationality is indicated as follows: "British Subject: Citizen of the United Kingdom and Colonies." Page five of the passport contains a stamp from the British Consulate General in Chicago dated May 28, 1971, indicating that the passport was renewed, valid until 8 July 1976. Page 28 of the passport contains a Kenya Resident's Certificate verifying that the respondent has a resident's certificate valid for the life of the holder of the certificate. Below it is a stamp which reads as follows: "Valid for return to Kenya within the validity of this Certificate."

The IMMIGRATION JUDGE. Mr. Mittleman, have you any objection to the receipt of this passport into evidence?

Mr. MITTLEMAN. No objection, Your Honor.

The IMMIGRATION JUDGE. The passport will be made part of the record of this proceeding and marked *EXHIBIT 3.*

Is that all, Mr. Shelby?

Mr. SHELBY. Yes, Your Honor.

The IMMIGRATION JUDGE. Mr. Mittleman, how long will it take you to prepare for the next hearing in the case?

Mr. MITTLEMAN. I would like two weeks, Your Honor.

The IMMIGRATION JUDGE. The hearing will be adjourned to January 31, 1974, at 1:00 p.m.

Mr. Mittleman, at that time also bring a fee of $50 which is required by regulations.

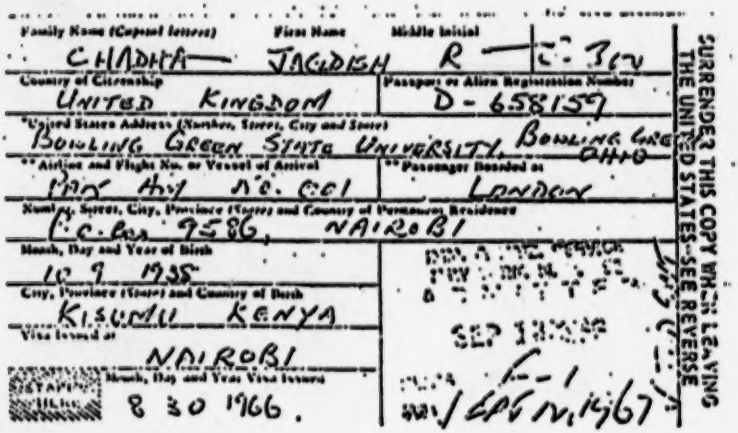
The hearing is adjourned.

I hereby certify that to the best of my knowledge and belief the foregoing pages numbered 1 through 14 are a complete and accurate transcript of the above hearing.

FAYE LOTHRIDGE,
Closed Microphone Reporter.

JANUARY 14, 1974.

Form I-94, Arrival-Departure Record
dated September 13, 1966



Family Name (Capital letters): CHADHA — First Name: JAGDISH — Middle Initial: R — C. 3 IV

Country of Citizenship: UNITED KINGDOM — Passport or Alien Registration Number: D-658159

*United States Address (Number, Street, City and State): BOWLING GREEN STATE UNIVERSITY, BOWLING GREEN OHIO

**Airline and Flight No. or Vessel of Arrival: PAN AM NO. 001 — **Passenger Boarded at: LONDON

Number, Street, City, Province (Town) and Country of Permanent Residence: P.O. Box 9586, NAIROBI

Month, Day and Year of Birth: 10 9 1938

City, Province (Town) and Country of Birth: KISUMU KENYA

Visa Issued at: NAIROBI

STAMP — Month, Day and Year Visa Issued: 8 30 1966.

SEP 13 1966

F-1

SURRENDER THIS COPY WHEN LEAVING THE UNITED STATES-SEE REVERSE

Exhibit 2 to Hearing in Deportation Proceedings Held January 11, 1974 Before Chester Sipkin, Immigration Judge

Exhibit 3 to Hearing in Deportation Proceedings Held January 11, 1974 Before Chester Sipkin, Immigration Judge - Handwritten note stating that the Respondent's passport was returned to him on December 6, 1974.

TRANSCRIPT OF HEARING IN DEPORTATION PROCEEDINGS HELD FEBRUARY 7, 1974, BEFORE CHESTER SIPKIN, IMMIGRATION JUDGE

Appearances:

For the Immigration and Naturalization Service—Stuart Shelby, Esq.

For the Respondent—Steve R. Mittleman, Esq.

The IMMIGRATION JUDGE. The first session of the hearing in this case took place on January 11, 1974, and was adjourned to afford the respondent an opportunity to prepare an application for suspension of deportation. Mr. Mittleman, are you ready to proceed?

Mr. MITTLEMAN. Yes, your Honor.

The IMMIGRATION JUDGE. Mr. Shelby, are you ready to proceed?

Mr. SHELBY. Yes, your Honor.

The IMMIGRATION JUDGE. Prior to the commencement of the hearing the respondent executed before me an application for suspension of deportation. This application together with its supporting documents will be made part of the record of the proceedings and marked EXHIBIT 4. Mr. Mittleman, are there any questions you would like to ask the respondent in connection with this application?

Mr. MITTLEMAN. Yes, your Honor.

Q. Mr. Chadha, would you tell the Court the hardships you would face?

The IMMIGRATION JUDGE. Do you think that will be necessary, Mr. Mittleman, since he has executed an affidavit?

Mr. MITTLEMAN. No, your Honor.

The IMMIGRATION JUDGE. Is there anything else?

Mr. MITTLEMAN. No.

The IMMIGRATION JUDGE. Mr. Shelby?

Mr. SHELBY. No, your Honor.

The IMMIGRATION JUDGE:

Q. Mr. Chadha, I see that you graduated from Bowling Green State University——

A. Yes, sir.

Q. And were given a diploma on December 16, 1971.

A. Yes.

Q. Have you done any work since you have graduated from college?

A. Well sir, I tried many places for the job in which I was qualified and every time I was told that I had to get the proper immigration visa.

Q. Do I understand from that that you have not worked?

A. No, I haven't.

Q. What have you been doing with yourself?

A. Well I was—first of all I was in Ohio for about six months and then I left that place, and I was looking for jobs around everywhere, and then I came to this Bay Area. Last year I had some job opportunities to get employment and I went to Los Angeles office in order to get a visa or to get some sort of word from them that I could work here since my case was very difficult I couldn't leave this country so they just confiscated my passport and Immigration told me not to work until the case has been sorted out. This is what I was told there.

Q. Who told you that?

A. The clerks at the Los Angeles office—immigration office.

Q. You were told not to work?

A. Yes, sir.

Q. Did they tell you why you couldn't work?

A. They said, "While you are under deportation orders, or else you will be deported, so it will be in your best interest—interests of this case to first settle the whole issue and then you can work." This is what—and I was so afraid of getting employment. I thought it would be illegal because I didn't know the rules, your Honor. So that's when I got in touch with Steve—Mr. Mittleman.

Q. When did you get in touch with him?

A. In August.

Q. August of what year?

A. Last year.

Q. August of 1973?

A. Yes, sir.

Q. And what did Mr. Mittleman tell you?

A. Well I just told him that I'm being deported and so I am under the orders. So he took my case and I told him that I cannot get employment because some of these companies ask for permanent citizens' order.

Q. Did you ask Mr. Mittleman if it was all right for you to work at any time or did you ask him if you were prohibited by the immigration laws from working?

A. I didn't ask him. I told him that I was prohibited not to work because this is what Los Angeles office told me.

Q. And Mr. Mittleman accepted that? He didn't say that it was wrong.

A. I guess—well he didn't—I just made the statement. He didn't say anything.

Mr. SHELBY. Your Honor, I would like to question the respondent this afternoon.

The IMMIGRATION JUDGE. I thought you had no questions.

Mr. SHELBY. It just occurred to me that he made two statements which may be inconsistent: one, that he wasn't employed because he was advised by this Service's employees that it would be in his best interest not to work, and the other statement was that he tried to obtain employment but couldn't because he didn't have the proper immigration documents.

The IMMIGRATION JUDGE:

Q. Explain that, Mr. Chadha.

A. I was looking for a job before I went to Los Angeles office—immigration office and I had written many applications and had some interviews and they told me that I have to get proper visa.

By Mr. SHELBY:

Q. When did you visit the Los Angeles Immigration Office?

A. June—I think it was June or July '73. After that I could not look for job because these people told me it would be sort of illegal like to get a job and they said—they asked me whether I was working; I said, no. He said, "We can trace it out if you are working." I said, well go ahead. He said, "If you are working that will be illegal act."

Q. Who told you that?

A. These people in Los Angeles.

Q. Did they misunderstand and think that you were in a student status?

A. No, they knew that I was no student.

The IMMIGRATION JUDGE. You are the first one who has ever told me that an Immigration Service employee advised them that they couldn't work when they are here illegally. There is absolutely no such law. And, I don't see how a clerk particularly those clerks who are trained at the information counter could give you that information. It strains credulity a little bit.

RESPONDENT. These people, these clerks at the information did not tell me that. The gentleman whom I approached at the immigration window looked at my passport. I wanted to discuss with him or talk with him that if there is any possibility for them to give me some sort of letter saying that I could work in this country since the companies or the institutions were looking for permanent residents. As soon as he looked at my passport and saw that it had expired and that I was staying illegally in this country he hustled me upstairs to the office of deportation where nobody would talk to me or somebody even said, "Now you are illegally here. There are lots of illegal immigrants in this country and we are going to deport you." And then they decided that I should have a hearing and some guy jokingly said that "Your offense is so big" that I could be put in the can. So then I asked this gentleman who was typing out all these things and then he told me that "Where do you want your hearing?" I said, well since I live in Berkeley, it would be

better to have it in San Francisco. And—But, they scheduled the hearing in Los Angeles which Mr. Middleman got it changed to this place. And at that time since I have a job opportunity to get into the field in which I want to, can I go ahead and work. They said, no, because, he says, "In your best interest it would be best not to work till this whole matter is straightened out." And that is why they kept on lingering and lingering and—until I got tired and I said it looks like I have to have a confrontation with the whole problem.

The IMMIGRATION JUDGE. If you asked the Immigration Officer to give you permission to work that is another story. He has not [sic] authority to authorize anybody to work, you don't need any authority. However, I will say on an occasion it is stamped on aliens' passports that they are permitted to work under certain circumstances.

RESPONDENT. Yes, sir. That's the advice I was told when I was at school that we are eligible to work during summers only and in case we do decide to live in this country we have to have the proper visa for the number of times or the number of months we would like to stay in this country as a training period. So that's why I had to use all my savings and ask my——

The IMMIGRATION JUDGE. I was going to get to your savings.

Q. In your application you show that you have $3,500 in assets. Where did you get this $3,500?

A. Well I had savings from—all this money is not here, part of it is in England.

Q. How much assets do you have here?

A. About $1100. I had about 2200–$2300.

Q. How were you supported when you were going to school?

A. I was on a scholarship and when I was at graduate school or when I was at undergraduate school I was on a grant.

Q. I still don't understand. Where did you get the $3500? How did you come in possession of $3500 which you say you have in assets?

A. This is—I brought with me about $2200 roughly, I think, and——

Q. And where did you get the $2200 that you brought with you?

A. From Kenya where I was working.

Q. That is what I am trying to find out: where you got the money from.

A. Oh, I'm sorry. And plus I kept on replenishing my savings by working in summers.

Q. I see in these documents that you presented that you have a fiancee by the name of Meaveen Sague, is that correct?

A. Yes, sir.

Q. Do you intend to get married in the near future?

A. It's not—well I cannot pinpoint the time but we eventually would get married.

The IMMIGRATION JUDGE. The reason I ask this is because your case is not a particularly good one for suspension of deportation. However, if you got married you would have no difficulty in having your status adjusted. Anything else, Mr. Mittleman?

Mr. MITTLEMAN. No, your Honor.

The IMMIGRATION JUDGE. Anything else, Mr. Shelby?

Mr. SHELBY. I'd just like to note for the record, your Honor, that I have a note in the respondent's file in my hand and I can't recall whether I made the telephone call or if someone did it at my request but the note reads as follows: "British Consulate contacted January 11, 1974. May be admissible to Great Britain, Kenya, or India as Ugandans have been admitted in similar circumstances."

The IMMIGRATION JUDGE. Mr. Mittleman, I'm unable to find on the basis of the evidence submitted that Mr. Chadha would suffer the extreme hardship required by the statute. Accordingly, I am going to deny his application for suspension of deportation. Now as an alternative you have asked for asylum on his behalf.

Mr. MITTLEMAN. That's correct.

The IMMIGRATION JUDGE. You want to proceed with that, I presume.

Mr. MITTLEMAN. Yes, your Honor.

The IMMIGRATION JUDGE. All right. I won't render my decision now. I'm going to adjourn the case so that you may proceed with your application for asylum. You will hear from the Immigration Service in connection with that application.

Mr. MITTLEMAN. Your Honor, with regards to that I might—I would just like to point out that there are letters and documentation which was submitted with the application from both the Republic of Kenya and also the British Consulate that indicates the situation that we have explained: that Mr. Chadha is not able to go to these countries.

The IMMIGRATION JUDGE. Sometimes it makes a difference if the Immigration Service asks rather than the respondent asking. I don't say it would make a difference but has been known to happen.

Mr. MITTLEMAN. That's possible.

The IMMIGRATION JUDGE. All right, you will hear further with regard to your request for asylum. When you come before me again there will be no necessity for paying any fee if the request is made to me under Section—under what is known as Section 243(h) of the Immigration and Nationality Act, because the respondent has paid his fee in connection with the application for suspension and that covers any other applications.

The hearing is adjourned.

The hearing is resumed.

Mr. Mittleman, on further thought I think I might be inclined to grant this application for suspension of deportation. Accordingly, I am going to ask you to withdraw for the present your request for asylum in behalf of the respondent. Do you agree?

Mr. MITTLEMAN. I withdraw it. Yes, I do.

The IMMIGRATION JUDGE. Now the next thing I have to do I have to have a character investigation conducted in this case. Those things take anywhere from six to nine months. When the character report is received and it is favorable, I would like you to stipulate that it may be made part of the record without further hearing. Do you so stipulate?

Mr. MITTLEMAN. I so stipulate.

The IMMIGRATION JUDGE. I presume you so stipulate also, Mr. Shelby.

Mr. SHELBY. Yes, your Honor.

The IMMIGRATION JUDGE. All right. I'll have the character investigation made and I'll consider the case further after it is received.

The hearing is closed.

I hereby certify that to the best of my knowledge and belief the foregoing pages numbered 15 through 23 are a complete and accurate transcript of the above hearing.

RAYMOND L. HOLTON,
Closed Microphone Reporter.

Date: MARCH 1, 1974

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form approved
OMB No. 43-R0245

File No. A

FEE STAMP

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN FORM)

(1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my ____ (Husband, wife, father, mother, child, children)

who is/are { ☐ citizen(s) / ☐ lawful permanent resident(s) } of the United States; and I have been physically present in the United States without an absence since ... September 16, 1966 - see attached

(2) My present true name is: (First, Middle, Last) — (10) My name given at birth was: Jagdish Rai Chadha

(3) I have been known by the additional name(s): none — (My sex is) male — (Height) 5'9¼" — (Color of eyes) brown — (Color of hair) black — (Complexion) dark

(4) I was born at (Place and country) Kisumu, Kenya — on (Month) (Day) (Year) 10/9/44 — My nationality is (Country of which citizen or subject) Great Britain

(5) I now reside at (Apt. number and/or in care of) Apt. 2 — (Number and street) 1210 Masonic Ave. — (City or town) Berkeley — (State) CA. — (ZIP Code) 94706

(6) I first entered the United States under the name of (First) Jagdish (Middle) Rai (Last) Chadha — on (Month) (Day) (Year) 9/16/66 — At (airport, seaport, or land border port) JFK - New York

Name of vessel or other means of conveyance: Pan Am — I was admitted as a (Insert visitor, crewman, treasure, student, permanent resident, or other): Student

for a period of time to expire (Insert date of period for which admitted): June 1972

If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible: 4 (four) years

Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates: (If you have never departed from the United States since your original date of entry, insert "no departures.")

(DEPARTED) Place	Date (Month-Day-Year)	(RETURNED) Place	Date (Month-Day-Year)	Immigration and Naturalization Service Officer (Admitted Yes or No)
New York	9/6/67	New York	9/1?	

(7) During the last 10 years, I have been in the United States as listed below: (If less than 10 years, set forth the time I have been in the United States.) List present address FIRST, and work back.

Street and Number—City or Town—State (Include number of boat room, furnished room or apartment or general address)	From—Month	From—Year	To—Month	To—Year
1210 Masonic Ave. #2 Berkeley, CA.	August	1972	present	
327 E. Court Bowling Green, Ohio	June	1971	August	1972
Convention Center Room 302, 330	September	'66	June	1971
Bowling Green State University				
Bowling Green, Ohio				

(Use a separate sheet for additional entries)

Exhibit 4 to Hearing in Deportation Proceedings held February 7, 1974 before Chester Sipkin, Immigration Judge

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(8) During the [illegible] in the places in the United States named above I was employed by the following-named persons or firms. (If not employed [illegible] present employment and proceed back to [illegible]. Any periods of unemployment or school attendance should be specified.

Full Name of Employer	Address of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From— Month	From— Year	To— Month	To— Year
Full time student through 1971 - worked some summers doing odd jobs while a student. Presently unemployed.							

(Use a separate sheet for additional answer.)

(9) If self-employed, describe nature of business, name under which business is conducted, its address and net income derived therefrom: n/a

(10) I ☐ AM ☒ AM NOT MARRIED. If married, the name of my spouse is ____ We were married on (Month) (Day) (Year) ____ at (City or town) ____ (State or country)

She or he was born at (City or town) ____ (State or country) on (Month) (Day) (Year) ____ and is a citizen of (Country) ____

(11) (If your spouse is other than a native born United States citizen, answer the following.) She or he arrived in the United States at (City or town) ____ on (Month) (Day) (Year) ____ ☐ was ☐ was not admitted for permanent residence.

was naturalized on (Month) (Day) (Year) ____ (Place naturalized) ____

(12) I ☐ have ☒ have not been previously married. (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage) ____

(13) My present spouse ☐ has ☐ has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage) ____

(14) My spouse ☐ is ☐ is not employed. If employed, give salary and name and address of place of employment ____

(15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse):

Cash, Stocks and Bonds	$ 3500	Cash, Stocks and Bonds	$
Real Estate	$	Real Estate	$
Other (Describe)	$	Other (Describe)	$
Total	$ 3,500	Total	$

(16) I have 07 children. Give information requested in each column:

Name	Age	Place of Birth	How Residing at—	Citizen of	Living Permanently Resident of U.S.

The names, assets, and earnings of my children in the United States who have separate incomes are: ____

(17) I ☐ have ☑ have not after entry into the United States acquired the status of an exchange alien.

(18) I ☑ have ☐ have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 27, 1950, and the Immigration and Nationality Act.

(19) I ☐ have ☑ have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received _____

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.) n/a

Date and place of entry on duty _____ Date of discharge _____

Type of discharge (honorable, dishonorable, etc.) _____ I served in active duty status from _____ to _____.

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes ☐ No ☐

If "Yes," give date, Selective Service number, local draft board number and your last draft classification. n/a

Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes ☐ No ☐

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☐ n/a

(23) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes ☐ No ☐ n/a

(24) Are membership, past or present, in all organizations, societies, clubs, unions, and associations, whether in the United States or a foreign country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any section, subsidiary, branch, affiliate, or subdivision of any such party or organization:

none

(25) I ☐ have ☑ have never (either in the United States or any other country) been arrested, summoned into court as a defendant, committed, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following _____

(Use a separate sheet for additional entries.)

(26) I can return to my country of ☐ Birth ☐ Nationality ☐ Last Residence without fear of persecution. If unable to return to any

(Check the appropriate block or blocks)

of these countries, give reasons unable to return to either country of birth or nationality because of immigration laws and ethnic background

(27) I ☐ would ☑ would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain: same as (26) - the laws of both country of birth and nationality make it illegal.

(28) Give the requested information about your parents, brothers, and sisters. As to residence, show street address, city, and state, if in the United States; otherwise show only country.

	Name	Relationship To Me	Now Residing At	Birthplace	Country Or Countries Of Which Subject Or Citizen	Country Possessing Control Of U.S.
1	Mrs. Rukmha Devi Chadha	mother	in England	India	Great Britain	no
2	Balraj Chadha	brother	in England	Kenya	Britain	no
3	Kewal K Chadha	brother	in Kenya	Kenya	Britain	no
4	Dev Vrat Chadha	brother	in England	Kenya	Britain	no
5	Mrs. Krishana Sothi	sister	in Kenya	kenya	Kenya	no
6	father deceased					

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IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country _____

(30) My father ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(31) My mother ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(32) The assets of my parents (not including clothing and household necessities) are:

Assets of father consist of the following:		Assets of mother consist of the following:	
Cash, Stocks and Bonds	$	Cash, Stocks and Bonds	$
Real Estate	$	Real Estate	$
Other (Describe)	$	Other (Describe)	$
Total	$	Total	$

(33) The following certificates or other documents are attached hereto as a part of this application: (Refer to instruction 3 for documents which must be attached.)

Nature of Document	
Affidavit - Paul Terrell	Statement of Hardships
Affidavit - Meaveen Sague	Explanation of trip to Expo
Affidavit - Jagdish Chadha	Letter from Kenya Embassy
Degree of Master of Arts	Leter from British Consulate
Degree of Bachelor of Science Business Administration	

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE)

I do swear (affirm) that the contents of the above application, with corrections numbered ( ) to ( ), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name. So Help Me God.

X /s/ Jagdish Chadha
Jagdish Chadha
(Complete and true signature of applicant or person on whose)

Subscribed and sworn to before me by the above-named applicant on this 7th day of January, 19 74.

/s/ Chester S. Pitkin
Immigration Judge

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COUNSEL'S STATEMENT OF HARDSHIPS

If the Application for Suspension of Deportation is denied unreasonable complications and undue hardships would ensue in the life of Jagdish Chadha. The seven years that Mr. Chadha has been an inhabitant of the United States has constituted a period of time in which has occurred his complete cultural and societal integration with American norms of living. This is an especially important factor to take into consideration in light of the permanent clevage from his immediate family members that this prolonged U.S. habitancy has created. Mr. Chadha's adaptation to life here has included strong personal ties to friends and also a formal engagement to be married that accentuate his necessity of belonging here. The threat of deportation would subject these personal ties to the possibility of cruel disruption.

Mr. Chadha has enriched his intellectual skills while in this country with the final achievement of a Master of Arts degree from Bowling Green State University in Ohio. The prospect of deportation would mean that Mr. Chadha hard-earned degrees would not be able to be professionally utilized or recognized relative to the varying standards of foreign educational/professional licensing systems. Hence deportation would subject him to a situation of precarious economic existence.

Finally, it must be taken into consideration, that a continued limbo status of official non-residency with which Mr. Chadha finds himself, minimizes his opportunity to obtain gainful and meaniful [sic] employment. Employers will not offer him professional long term

employment when his future residency is in doubt. Mr. Chadha assumes a double burden of not being able to forsee subsistence in a foreign country and at the same time not being given the opportunity here to begin to economically support himself and add his talents to our national progress.

With these reasons I urge swift positive action by the Court on Mr. Chadha's application for Suspension of Deportation.

STEVE R. MITTLEMAN,
Attorney at Law,
302 Precita Avenue, San Francisco 94110.

AFFIDAVIT OF JAGDISH RAI CHADHA

JAGDISH RAI CHADHA, being duly sworn says:

I was born in Kenya and came to the United States in September of 1966 for higher education. I am of Indian origin and traveling on a British passport. I got my B.S. and M.A. at Bowling Green Ohio. My student visa had expired in June 1972.

Upon completion of my studies in Ohio I was not allowed either by Kenya or England to enter as a permanent resident and as a result I was stranded in this country. I was in touch with immigration authorities of Ohio as well as California and from time to time I was told that I had to find an employer who would sponsor me here as a permanent resident. Unfortunately I have not been successful so far.

In case I am asked to leave this country I shall face many hardships: (a) Both Kenya as well as Great Britain do not want me or people of my ethnic background [sic]. This is their immigration policy. As they

did not allow me to enter those countries I have no desire to go there. I do not want to subject myself to any economic, racial or political hostilities. I do not find such hostilities here in the United States.

(b) I have been here seven years and I have considered this country to be my home. All my friends are in this country and that makes living in this country very worthwhile.

(c) I got my education in an American institution and I am well familiar with ways and life-style of people. In fact, I am well adjusted to the entire American philosophy of living.

(d) And most important I am engaged to an American citizen—Miss Meaveen Sague—and we contemplate getting married sometime in the future. It would be indeed a hardship for both of us if we are separated at this stage of our involvement.

(e) All my family members are scattered. Two of my brothers and my mother live in England. My oldest brother and sister are in Kenya and very soon they will leave that country to go somewhere else. So I have no permanent home to where I can return. The only home I have known for the past seven years has been this country. It would be extremely difficult for me to start afresh in some other country. I stayed in England for 12–14 days and that was enroute to the U.S.A. East Africa is out because Asians as well as Europeans are facing a very uncertain and unstable period. The events in Uganda (in 1973) have frightened many immigrant communities in those countries and that is why Asians want to leave those countries.

In conclusion I would like to say that I am very

well integrated into American culture and given an opportunity I would like to contribute to the welfare of this country, after all I owe a great deal to the American people.

JAGDISH RAI CHADHA.

Subscribed and sworn to before me on Feb. 7, 1974.

DIANA K. RHOTEN,
Notary Public—California.

AFFIDAVIT OF PAUL TERRELL

PAUL TERRELL, being duly sworn says:

That I am a citizen of the United States of America.

My wife and I have known Jagdish Chadha for nearly two years. He is now perhaps our most trusted family friend—and without doubt, the favorite adult friend of our 3½ year old son, Joshua.

Concerning Jagdish's potential for constructive residence here, I can unhesitantly attest to his high standard of personal conduct. On occasion since we have known him, Jagdish has taken care of our home while we have been traveling, and has also taken care of Joshua, for less extensive periods. We know him well, and though it sounds stilted to reel off the adjectives, he is an intelligent, hard working, honest, and particularly conscientious individual. I am certain that he will have no difficulty obtaining productive employment as soon as he is legally permitted to do so. My wife and I have been considerably impressed, in our personal relationship with Jagdish, by his consistent generosity, humor, and positive attitude, despite the limbo existence he has endured while his status has been in question.

We feel great warmth toward Jagdish as an individual, and have the highest respect for his capabilities. We sincerely hope that he will be enabled to realize his potential here, and be permitted to settle into a more stable and secure existence.

If there is any additional way in which I can be of help, please do not hesitate to contact me.

PAUL TERRELL.

Subscribed and sworn to before me on Feb. 7, 1974

DIANA K. RHOTEN,
Notary Public—California.

AFFIDAVIT OF MEAVEEN SAGUE

MEAVEEN SAGUE, being duly sworn says:

I am a citizen of the U.S.A.

I have known Jagdish Chadha for seven years now. We met in college a [sic] Bowling Green University in Ohio. I came to California in 1971 while he finished his masters degree in Ohio. He later joined me here in 1972. We are engaged to be married, but have not as yet set a date.

Although I may be biased I believe that my attitude toward him and opinions concerning his character are both very objective and real. Just about everyone who has ever met Jagdish since I have known him has immediately taken a liking to him. He is and [sic] extremely warm and generous person.

Intelligence is a matter of definition, but I do consider Jagdish a man of great intelligence. He is a deep thinker and has shown outstanding insight. He has applied himself and worked hard. In college he had a

leadership position—head of the International Men's Dormitory. He took that job very seriously and showed a great capacity and ability to carry out important responsibilities. Before that he was a teacher, at which time I didn't know him, but his friends and family have said that he was quite a good teacher.

Since he has been in California he has been unable to work at any job because of the restrictions put upon him by the immigration authorities. He has spent most of this time helping other people in various capacities. Needless to say it has been a rather depressing period for Jagdish. He is a man of strong drive and hasn't been able to move in any direction in terms of career during this last year.

As an individual Jagdish would be a great asset to this country. He is very americanized and has the country's good at heart. One of his biggest goals is to contribute to the improvement of the United States. He belongs here more than he belongs in any other country. He has received most of his education here and all of his friends are here.

If Jagdish is deported it would be a great hardship for both of us. I have a very good job as a teacher in the Richmond School District and would hate to go to another country to live, leaving my family and friends and a job that I love. Also there would be the problem of my establishing a citizenship in another country if I went with him. We are deeply committed to each other and want to be together in this country. I sincerely hope that the immigration authorities will realize that it is to my and Jagdish's advantage, as

well as to this country's advantage, to grant him his United States citizenship.

If there is any additional information or help that I can give, please contact me.

MEAVEEN SAGUE.

Subscribed and sworn to before me on Feb. 7, 1974.

DIANA K. RHOTEN,
Notary Public—California.

BRITISH CONSULATE GENERAL,
Chicago, Ill., May 10, 1972.

MR. JAGDISH CHADHA
327 East Court Street
Apartment C
Bowling Green, Ohio

DEAR MR. CHADHA: Thank you for your further letter of 1 May.

I have now received a reply from the competent British authorities concerning your eligibility for a Quota Voucher for employment in the United Kingdom. I am advised that if you were to make an application for such a voucher through this office it could take at least a year before a voucher were issued. It could take considerably longer, as priority is given to British residents of East Africa whose future residence there becomes uncertain.

I would advise you, therefore, to arrange for your immigrant status here to be regularised, so that you can obtain employment here and remain here indefinitely. You may show this letter to the United States Immigration and Naturalization Service, to support your request for immigrant status here.

For advice on visiting Kenya, you should approach the Kenya Embassy in Washington, and not, as you indicated in your letter, the British High Commission in Nairobi.

Yours sincerely,

M. J. SENSIER,
Vice Consul.

EMBASSY OF THE REPUBLIC OF KENYA.
Washington, D.C., November 12, 1973.

Mr. JAGDISH CHADHA
1210 Masonic Ave., No. 2
Berkeley, Calif.

DEAR MR. CHADHA: I acknowledge receipt of your letter dated 30th October, which was a reply to my letter regarding your immigration status in Kenya.

According to our Immigration Act of 1967, any person who is not a citizen of Kenya (i.e. a person holding a passport of another country) whether born in Kenya or wherever would eventually be required to possess an Entry (work) Permit authorising him to remain in Kenya. You fall under this category and before you would be allowed to remain in Kenya, you would be required to obtain a pass or permit.

Our immigration regulations do not have provision for one being a native while not being a citizen of Kenya. In fact this is the first time I have heard of such a word which does not make sense in our immigration laws.

If you had wanted to remain in Kenya forever, you would have obtained citizenship during 1964–1965

Grace Period. Those like you who did not apply for Kenya citizenship during this period obviously planned to leave in future to a country of their own choice. You are therefore, not Kenya's responsibility.

Yours faithfully,

S. M. KIARIE,
Third Secretary (Consular Affairs).

BRITISH CONSULATE-GENERAL,
San Francisco, Calif., November 29, 1973.

MR. JAGDISH CHADHA
1210 Masonic Avenue, No. 2
Berkeley, Calif.

DEAR SIR: Please refer to your letter of 30 October about entry into Britain and employment therein.

As you know the basis for entry into Britain is on a quota allocation system. At the present time priority for quota vouchers is being given to residents of East Africa whose position becomes untenable. As Mr. Sensier in his letter of 10 May from the Consulate-General, Chicago, stated, the present elapsed time for application to approval of a voucher would be at least a year and possibly much longer. I would suggest therefore that you inform the United States Immigration and Naturalization Service of these facts and seek permission to reside here and to take employment. Any other course, as stated above, would involve a delay of many, many months and possibly several years.

Yours faithfully,

DOUGLAS BROOKFIELD
H. M. Consul.

COUNSEL'S EXPLANATION OF RESPONDENT'S DEPARTURE FROM THE UNITED STATES IN 1967

On September 7, 1967, Respondent left the United States for a period of one week, returning to the United States on September 13, 1967. This trip was a student sponsored (Bowling Green State University) visit to the 1967 Montreal World's Fair. The intent of the Respondent was such that this departure should not be considered as meaningfully interruptive of his continuous presence in the United States.

IN THE MATTER OF JAGDISH RAI CHADHA, RESPONDENT

IN DEPORTATION PROCEEDINGS

DECISION OF THE IMMIGRATION JUDGE

Discussion of Deportability:

The respondent is a native of Kenya, citizen of the United Kingdom, of the East Indian race, age 29, who was admitted to the United States as a student on September 6, 1967 at New York, New York. He was subsequently authorized to remain in the United States as a student until June 30, 1972. He remained thereafter. He has admitted, and I find, that he is deportable as charged.

DISCUSSION OF ELIGIBILITY FOR SUSPENSION OF DEPORTATION:

The respondent has resided in the United States continuously since his entry on September 13, 1967 with the exception of a one week visit to the Worlds

Fair at Montreal, Quebec, Canada from which he returned on September 13, 1967. Checks of local police and Federal agencies do not disclose any arrests. There has been made part of the record the affidavits of two citizens of the United States who have known him during his residence in this country attesting to his good moral character. A character investigation conducted by the Immigration and Naturalization Service revealed nothing adverse to him. I find that he has been a person of good moral character for at least seven years preceding his application for suspension of deportation.

The degree of bachelor of science in business administration was conferred upon the respondent by Bowling Green State University, Ohio on March 21, 1970, and the degree of master of arts by the same university on December 16, 1971. He has not been employed since leaving school because, he says, he has been unable to find work commensurate with his professional qualifications by reason of the fact that he does not have a lawful status in the United States. He has been living on his savings which presently total some $3500 in cash. He is engaged to be married to a citizen of the United States. His father is deceased. He has a mother and two brothers in England and a brother and sister in Kenya.

The respondent has established that it would be extremely difficult, if not impossible, for him to return to Kenya or go to Great Britain by reason of his racial derivation. He has stated that his deportation would result in a hardship to him because he has

formed strong personal ties with friends and because it is questionable whether he would be able to utilize his education in other countries.

Because of his race and the difficulties he would face by reason thereof, I am satisfied that his deportation would result in an extreme hardship to him. I am also of the opinion that because of this circumstance, his application for suspension of deportation should be granted as a matter of administrative discretion.

IT IS ORDERED that the deportation of the respondent be suspended under the provisions of Section 244(a)(1) of the Immigration and Nationality Act, as amended.

IT IS FURTHER ORDERED that if Congress takes no action adverse to the order granting suspension of deportation, the proceedings be cancelled and that appropriate action be taken pursuant to Section 244(d) of the Immigration and Nationality Act, as amended.

IT IS FURTHER ORDERED that in the event Congress takes action adverse to the order granting suspension of deportation these proceedings shall be reopened upon notice to the respondent.

CHESTER SIPKIN
Immigration Judge.

TRANSCRIPT OF HEARING IN DEPORTATION PROCEEDINGS HELD ON AUGUST 4, 1976 BEFORE CHESTER SIPKIN, IMMIGRATION JUDGE

The IMMIGRATION JUDGE. Mr. Pohlmann, are you ready to proceed?

Mr. POHLMANN. I am, Your Honor.

The IMMIGRATION JUDGE. Mr. Simpson, are you ready to proceed?

Mr. SIMPSON. Yes.

The IMMIGRATION JUDGE. On June 25, 1974, I entered a decision in this case granting the respondent's application for suspension of deportation. However, the House of Representatives passed House Resolution 926 on December 12, 1975, indicating that it did not favor the suspension of deportation in his case. Accordingly, I reconvened the hearing.

Q. Mr. Chadha, you are reminded that you are still under oath to tell the truth, do you understand?

A. (Nods head.)

The IMMIGRATION JUDGE. Mr. Pohlmann, it would appear that the only relief available for the respondent at this time is the grant of voluntary departure. Do you wish to apply for that privilege on his behalf?

Mr. POHLMANN. No, Your Honor, and at this time I'd like to move that these proceedings be terminated on the grounds that Section 244(c)(2) of the Immigration and Nationality Act is unconstitutional in that it is in contravention to Article 1, Section 7, of the Constitution in that it's violative of the separation of powers doctrine.

The IMMIGRATION JUDGE. You mean the suspension of deportation procedure is invalid?

Mr. POHLMANN. No, the Congressional review as provided for in Section 244(c)(2).

The IMMIGRATION JUDGE. Well where will that leave us? I am not quite certain. If it is unconstitutional where would that leave the respondent?

Mr. POHLMANN. He would have the grant of suspension of deportation.

Mr. SIMPSON. Not necessarily, counsel, because as we discussed preliminarily if you are successful and it has the affect of extinguishing the right of suspension of deportation under any and all circumstances—in other words the entire procedure is declared unconstitutional, he will be deportable.

Mr. POHLMANN. Section 406 of the Act would allow the separability of Section 244(c)(2) from the remaining portions of Section 244 and would not require the complete abandonment of the concept of suspension—the concept or the act of suspension of deportation.

The IMMIGRATION JUDGE. I am not sure that I agree with you, Mr. Pohlmann. It would seem to me that the whole suspension procedure is a package deal and if the Congressional review aspect is found unconstitutional it would follow that the whole section would become inoperative. You may be right but this is how it appears to me. But in any event, Mr. Pohlmann, as you know I have no authority to decide the constitutionality of statutes and if you don't apply for voluntary departure the only alternative I will have is to enter an order for the respondent's deportation.

Mr. POHLMANN. We understand that, Your Honor.

The IMMIGRATION JUDGE. Is there anything else you want to say at this time?

Mr. POHLMANN. No, Your Honor.

The IMMIGRATION JUDGE. Mr. Simpson, is there anything you want to say or bring out?

Mr. SIMPSON. No, I don't believe under the circumstances it is necessary. The Service is obviously taking the position in this particular case that as the section is constitutional and Congress has the power to set conditions subsequent on the grant of suspension of deportation in this case the approval or disapproval.

The IMMIGRATION JUDGE. I might say, however, Mr. Pohlmann, for whatever advantage it might bring to you, that I agree with you that the Congressional review of a decision of the executive branch of the Government which I represent would be unconstitutional.

Mr. POHLMANN. Thank you, Your Honor.

The IMMIGRATION JUDGE. I will now render my decision. Before I render my decision, counsel, there is no definite designation of the country of deportability. In the event I order the respondent's deportation, and I intend to order that he be deported, do you wish to designate the country of deportability?

Mr. POHLMANN. No, Your Honor, we will not designate a country.

The IMMIGRATION JUDGE. All right, Mr. Pohlmann, in the event—well I said I was going to order him deported—in my decision I propose to order that he be deported to the United Kingdom of which he is a citizen. If you think that he will be persecuted in that country you can either apply for asylum to the District Director or you can apply for the withholding of deportation under Section 243(h). Do you wish to apply?

Mr. POHLMANN. We will reserve that right, Your Honor, at this time.

The IMMIGRATION JUDGE. I will give you a period of ten days within which to submit applications. If you do not do so either to the District Director for asylum or to me for Section 243(h) relief I will consider that you have waived your right to apply. If you do apply for asylum I will refer the case to the District Director and he can consider the asylum question. After which, if necessary, it will be referred to me for the 243(h) application.

The hearing is closed.

I hereby certify that to the best of my ability and belief the foregoing pages numbered 1 through 4 are a complete and accurate transcript of the above direct recorded hearing.

BESSIE M. MINOR
Closed Microphone Reporter.

AUGUST 5, 1976.

IN THE MATTER OF JAGDISH RAI CHADHA, RESPONDENT

IN DEPORTATION PROCEEDINGS

DECISION OF THE IMMIGRATION JUDGE

On June 25, 1974, I entered a decision in this case finding the respondent deportable on the charge in the Order to Show Cause, but granted his application for suspension of deportation under the provisions of

Section 244(a)(1) of the Immigration and Nationality Act, as amended. In my order I provided that in the event Congress took action adverse to the order granting suspension of deportation, the proceedings were to be reopened. On December 12, 1975, the House of Representatives passed House Resolution 926 indicating that the House did not favor suspension in the case of the respondent. Accordingly, the proceedings were reopened.

At the reopened hearing, the respondent moved that the proceedings be terminated contending that Section 244(c)(2) which, in effect, provides for congressional review of decisions granting suspension of deportation, is unconstitutional because it is violative of the separation of powers doctrine.

It appears to me that the respondent has a point. However, I have no authority to pass on the constitutionality of acts of Congress. Since he has not applied for voluntary departure, an order for his deportation will have to be entered.

Although the respondent is a native of Kenya, he is a citizen of the United Kingdom, and I designated the United Kingdom as the place of deportability. He then claimed that he would be persecuted if deported to that country. He was given a period of ten days within which to apply to the District Director for asylum or to me for the withholding of his deportation under Section 243(h) of the Immigration and Nationality Act. He did not file either of such applications.

IT IS ORDERED that the respondent be deported from the United States to the United Kingdom on the charge set forth in the Order to Show Cause.

CHESTER SIPKIN
Immigration Judge.

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS, IMMIGRATION AND NATURALIZATION SERVICE

File No. A17 385 958 San Francisco, California

IN THE MATTER OF CHADHA, JAGDISH RAI

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated November 8, 1976 in the above entitled case.

2. Briefy, state reasons for this appeal: Section 244(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1254(c)(2)) is unconstitutional in that it provides for legislation inconsistent with and in contravention of Article I, Section 7 of the United States Constitution and is violative of the separation of powers, doctrine contained in Article I, Section 6 of the United States Constitution. The Deportation proceeding from which this appeal is taken should have been terminated.

3. I do not desire oral argument before the Board of Immigration Appeals in Washington, D.C.

4. I am not filing a separate written brief or statement.

JOHN M. POHLMANN
517 Washington St.
San Francisco, Calif.

NOVEMBER 11, 1976.

UNITED STATES DEPARTMENT OF JUSTICE,
BOARD OF IMMIGRATION APPEALS,
Washington, D.C., February 11, 1977.

File: A17 385 958—San Francisco
In re: Jagdish Rai Chadha
IN DEPORTATION PROCEEDINGS
APPEAL ON BEHALF OF RESPONDENT: John M. Pohlmann, Esquire
517 Washington Street, San Francisco, CA 94111.
ON BEHALF OF I&N SERVICE: Brian H. Simpson, Trial Attorney.
CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251 (a)(2))—Nonimmigrant student—remained longer than permitted.

APPLICATION: None.

This case comes forward on appeal from an order of an immigration judge finding the respondent deportable under the provisions of section 241(a)(2) of the Immigration and Nationality Act and ordering his deportation since he declined to make an application for any relief. The appeal will be dismissed.

On appeal the respondent contended that the invocation by the United States Congress of the provisions of section 244(c)(2) of the Act in denying him relief under section 244(a)(1) of the Act is unconstitutional.

This argument is without merit. We have no power to declare unconstitutional an act of Congress, *Panitz v. District of Columbia,* 112 F.2d 39 (D.C. Cir. 1940); *Matter of Santana,* 13 I&N Dec. 362

(BIA 1969); *Matter of L-*, 4 I&N Dec. 556 (BIA 1951). Moreover, we have held that "Congress has the absolute and qualified power to prescribe the conditions under which an alien may enter the United States," *Matter of Santana,* supra. In the circumstances, we have no alternative but to affirm the decision of the immigration judge and dismiss the appeal.

ORDER: The appeal is dismissed.

DAVID L. MILHOLLAN
Chairman.

U.S. GOVERNMENT PRINTING OFFICE: 1981